

1  
2  
3  
4  
5  
6  
7  
8                   UNITED STATES DISTRICT COURT  
9                   WESTERN DISTRICT OF WASHINGTON  
10                  AT TACOMA

11 RENEE C. MAURICE,

12                  Plaintiff,

13                  v.

14                  ALLSTATE INSURANCE  
15                  COMPANY,

16                  Defendant.

17                  CASE NO. 2:19-CV-1837-JCC-DWC

18                  ORDER ON MOTION TO AMEND

19                  The District Court referred this action to United States Magistrate Judge David W.  
20 Christel. Dkt. 6. Presently before the Court is Plaintiff Renee C. Maurice's FRCP 15(a)(2)  
21 Motion for Leave to Amend Her Complaint. Dkt. 35. The Court concludes Plaintiff's request to  
22 amend is sought in bad faith in an effort to defeat diversity jurisdiction. Therefore, the Motion to  
23 Amend (Dkt. 35) is denied.

24                  **I.      Background**

25                  In the Complaint, Plaintiff raises claims related to two motor vehicle accidents. Dkt. 1-1.  
26 Plaintiff was involved in a 2013 accident, the facts of which are not relevant to the Motion to  
27 Amend. Plaintiff was also involved in a 2016 car accident caused by a third-party, Shawn Liu.

1     See Dkt. 1-1, p. 3. Plaintiff settled with Liu's insurer for \$25,000. See Dkt. 22, p. 4. At the time  
 2 of the accident, Plaintiff was covered by an automobile insurance policy she purchased from  
 3 Defendant. Dkt. 1-1, p. 2. The policy includes underinsured motorist ("UIM") benefits with  
 4 limits of \$100,000. *Id.* at 6; Dkt. 22-1, p. 3. In the Complaint, Plaintiff alleges only a breach of  
 5 contract claim arising from the 2016 accident which the Court has dismissed. See Dkt. 1-1; Dkt.  
 6 43.

7                 On April 30, 2020, approximately one month after the undersigned recommended the  
 8 claim arising from the 2016 accident be dismissed with prejudice, Plaintiff filed the Motion to  
 9 Amend. Dkt. 35. In the Motion to Amend, Plaintiff seeks to add Matt Weiss, an Allstate UIM  
 10 adjuster, as a defendant and add extra-contractual claims against Allstate and Matt Weiss related  
 11 to their handling of Plaintiff's UIM claim arising from the 2016 accident. *Id.* On May 31, 2020,  
 12 the Court dismissed the sole claim arising from Plaintiff's 2016 accident with prejudice as  
 13 Plaintiff had failed to show she complied with her policy and made a demand for coverage  
 14 benefits. Dkt. 43. Thus, the only claims currently pending in this litigation are a breach of  
 15 contract claim and a Consumer Protection Act ("CPA") claim related to the 2013 accident.

## 16                 II.      Discussion

17                 Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure,

### 18                 (1) ***Amending as a Matter of Course***

19                 A party may amend its pleading once as a matter of course within: (A) 21 days after  
 serving it, or

20                 (B) if the pleading is one to which a responsive pleading is required, 21 days after  
 service of a responsive pleading or 21 days after service of a motion under Rule  
 12(b), (e), or (f), whichever is earlier.

### 21                 (2) ***Other Amendments***

22                 In all other cases, a party may amend its pleading only with the opposing party's  
 written consent or the court's leave. The court should freely give leave when justice  
 so requires.

1 As the time has expired for filing an amendment as a matter of course, Plaintiff cannot amend  
 2 pursuant to Rule 15(a)(1). Further, Defendant has not provided written consent allowing Plaintiff  
 3 to amend. *See* Dkt. 37. Thus, to amend the Complaint, Plaintiff must have the Court's leave.  
 4 *See* Fed.R.Civ.P. 15(a)(2).

5 "Rule 15(a) is very liberal and leave to amend 'shall be freely given when justice so  
 6 requires.'" *AmerisourceBergen Corp. v. Dialysis West, Inc.*, 445 F.3d 1132, 1136 (9th Cir. 2006)  
 7 (quoting Fed.R.Civ.P. 15(a)). In determining whether leave to amend is appropriate, the district  
 8 court considers 'the presence of any of four factors: bad faith, undue delay, prejudice to the  
 9 opposing party, and/or futility.'" *Owens v. Kaiser Foundation Health Plan, Inc.*, 244 F.3d 708,  
 10 712 (9th Cir. 2001) (quoting *Griggs v. Pace Am. Group, Inc.*, 170 F.3d 877, 880 (9th Cir. 1999)).  
 11 After review of the record, the Court finds Plaintiff's Motion was brought in bad faith.

12 "[T]he motive of a plaintiff in seeking the joinder of an additional defendant is relevant to  
 13 a trial court's decision to grant the plaintiff leave to amend his [or her] original complaint."  
 14 *Desert Empire Bank v. Ins. Co. of N. America*, 623 F.2d 1371, 1376 (9th Cir. 1980). "[A] trial  
 15 court should look with particular care at such motive in removal cases, when the presence of a  
 16 new defendant will defeat the court's diversity jurisdiction and will require a remand to the state  
 17 court." *Id.* Likewise, a court deciding whether to grant a motion for leave to amend under Rule  
 18 15(a) must determine the true purpose of the amendment and decide whether amendment is  
 19 sought "in bad faith." *See Eminence Capital, LLC v. Aspeon*, 316 F.3d 1048, 1052 (9th Cir.  
 20 2003).

21 The record shows Plaintiff's true purpose in seeking to amend her Complaint is to defeat  
 22 this Court's diversity jurisdiction. First, in her Response to Allstate's Motion for Summary  
 23 Judgment, Plaintiff "sought" to amend her Complaint to add a claim against Allstate's UIM  
 24

1 adjuster. Dkt. 25, pp. 11-12. Plaintiff did not provide details about the merits of the claim and  
2 simply stated “[s]uch an amendment would destroy diversity and result in remand of this entire  
3 action back to state court.” *Id.* at 12. Plaintiff’s first attempt to amend shows the true purpose for  
4 seeking to amend the Complaint is to destroy diversity and remand this entire action back to state  
5 court.

6 Second, in the Motion to Amend, Plaintiff asserts the UIM adjuster should be added,  
7 which would require this case be remanded “back to state court where it belongs, and proceed  
8 according to Washington law - substantive and procedural – as it should.” Dkt. 35, p. 6.  
9 Plaintiff’s statement in the Motion to Amend again shows Plaintiff’s true purpose for seeking to  
10 amend the Complaint is to require remand back to state court.

11 Third, Plaintiff seeks to add claims based on alleged conduct unrelated the events giving  
12 rise to this litigation. In the Motion to Amend, Plaintiff seeks to add extra-contractual claims  
13 arising from Defendant’s and the UIM adjuster’s conduct related only to a 2016 accident. The  
14 only claims pending in this case are claims for breach of contract and a CPA violation arising  
15 from a 2013 accident. Dkt. 1-1, 24, 43. Plaintiff contends the amendment would defeat diversity  
16 for the entire case – including the 2013 claims. The 2016 claims are unrelated to the claims now  
17 pending in this action and Plaintiff has provided only vague allegations to show the UIM  
18 adjuster’s conduct gives rise to extra-contractual claims. *See* Dkt. 35. Moreover, it appears  
19 Plaintiff did not intend to pursue these extra-contractual claims until after dispositive motions  
20 were filed. *See* Dkt. 38, p. 5 (December 11, 2019 email indicating Plaintiff was not asserting any  
21 extra-contractual claims related to the 2016 accident). Plaintiff’s vague allegations and attempts  
22 to add claims unrelated to the events giving rise to this litigation also show her true purpose in  
23 seeking to amend the Complaint is to defeat diversity jurisdiction.

24

1 Based on the record before the Court, the Court finds Plaintiff's true purpose in  
2 attempting to amend the Complaint is to defeat diversity jurisdiction. Therefore, the Motion to  
3 Amend was brought in bad faith. *See McCabe v. General Foods Corp.*, 811 F.3d 1336, 1340 (9th  
4 Cir. 1987) (affirming denial of an amendment that was offered in bad faith in order to destroy  
5 removal jurisdiction).

### III. Conclusion

7 As the record shows the Motion to Amend was brought to defeat diversity jurisdiction  
8 and require this Court to remand the case back to state court, the Court finds leave to amend was  
9 sought in bad faith. Accordingly, the Motion to Amend (Dkt. 35) is denied.

10 Dated this 16th day of June, 2020.

David W. Christel  
David W. Christel  
United States Magistrate Judge